

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

FRANCISCO JOSUE BELTRAN,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

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2:17-CV-181-D

ORDER

After making an independent review of the pleadings, files, and records in this case and the October 30, 2018 findings, conclusions, and recommendation of the magistrate judge, the court concludes the magistrate judge's findings and conclusions are correct. It is therefore ordered that the recommendation of the magistrate judge is adopted, respondent's motion to dismiss section 2255 as untimely is granted, and movant's motion to vacate, set aside, or correct sentence is dismissed.

Considering the record in this case and pursuant to Fed. R. App. P. 22(b), Rule 11(a) of the Rules Governing Section 2255 Proceedings in the United States District Courts, and 28 U.S.C. § 2253(c), the court denies a certificate of appealability. The court adopts and incorporates by reference the magistrate judge's findings, conclusions, and recommendation filed in this case in support of its finding that the movant has failed to show (1) that reasonable jurists would find this court's "assessment of the constitutional claims debatable or wrong," or (2) that reasonable jurists would find "it debatable whether the petition states a valid claim of the denial of a constitutional right" and "debatable whether [this court] was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S.473, 484 (2000).

If movant files a notice of appeal,

- () movant may proceed *in forma pauperis* on appeal.
- (X) movant must pay the \$505.00 appellate filing fee or submit a motion to proceed *in forma pauperis*.

SO ORDERED.

November 30, 2018.


SIDNEY A. FITZWATER
SENIOR JUDGE